

RICHARD F. LORITZ
ATTORNEY AND COUNSELOR AT LAW
7800 WEST COLLEGE DRIVE
PALOS HEIGHTS, ILLINOIS 60463
312/361-0095

October 20, 1987

1 5342

REGISTRATION NO. _____ FILED 1488

OCT 27 1987 - 10 22 AM

INTERSTATE COMMERCE COMMISSION

Office of the Secretary
Interstate Commerce Commission
Washington D.C. 20423

Re: Lease of Locomotive Equipment
National Railway Equipment Co., Lessor
Red River Valley and Western Railroad Company, Lessee

Dear Mr. Secretary:

I have enclosed an original and one copy of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a lease of locomotive equipment and is a primary document dated July 1, 1987. The names and addresses of the parties to the documents are as follows:

Lessor

National Railway Equipment Co.,
An Illinois Corporation
11400 S. Robey Street
P.O. Box 2270
Dixmoor, IL 60426

Lessee

Red River Valley and Western Railroad Company,
A Minnesota Corporation
2110 First Bank Place West
Minneapolis, Minnesota 55402

A description of the equipment covered by the document follows:

Ten (10) CF 7 remanufactured locomotives identified by serial numbers CF 7 EMD 300, CF 7 EMD 301, CF 7 EMD 302, CF 7 EMD 303, CF 7 EMD 304, CF 7 EMD 305, CF 7 EMD 306, CF 7 EMD 307, CF 7 EMD 308, CF 7 EMD 309.

A fee of \$10.00 is enclosed. Please return the original and any extra copies not needed by the commission for recordation

to Richard F. Loritz, 7800 W. College Drive, Palos Heights,
1L 60463.

A short summary of the document to appear in the index
follows:

Lease of Ten CF 7 Remanufactured Locomotives from
National Railway Equipment Co. as Lessor to Red River Valley
and Western Railroad Company as Lessee, with option to
purchase in favor of the lessee.

Also attached is a certificate executed by the attorney in
fact for National Railway Equipment Co. and appropriately
notarized declaring that any unexecuted copies transmitted
herewith have been compared to the original and have been
found to be complete and identical in all respects to the
original document.

Very truly yours,

NATIONAL RAILWAY EQUIPMENT CO.
an Illinois Corporation

By:


RICHARD F. LORITZ, it's
attorney and agent in fact

RFL/v
Enclosure

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

10/27/87

Richard F. Loritz
7800 West College Drive
Palos Heights, Illinois 60463

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/27/87 at 10:30am, and assigned recordation number(s). 15342 + 15343

Sincerely yours,

Noreta R. McGee
Secretary

Enclosure(s)

SE-30
(7/79)

AFFIDAVIT

1 5342
RECORDATION NO. _____ FILED 1485

OCT 27 1987 -10 22 AM

INTERSTATE COMMERCE COMMISSION

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The undersigned states that the undersigned has read a true copy of the original document and that the document attached hereto is a complete and identical document in all respects to the original.

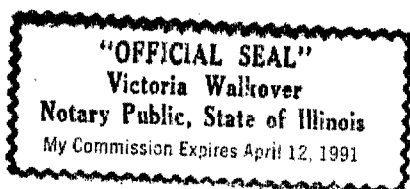
The undersigned has compared the copy with the original and has found the copy to be complete and identical in all respects to the original document (excepting only the fact that the attached copy is not fully signed, whereas the original contained full signatures).

This affidavit is made pursuant to the procedures in Section 1177.3(2)(b) relative to the recordation of documents with the Interstate Commerce Commission.

Richard F. Lutz
AFFIANT

Subscribed and Sworn to
before me this 21 day
of October, 1987.

Victoria Walkover
Notary Public



LEASE OF LOCOMOTIVE EQUIPMENT

THIS AGREEMENT, made as of the 1st day of July, 1987, by and between NATIONAL RAILWAY EQUIPMENT CO., (hereinafter referred to as lessor) and RED RIVER VALLEY AND WESTERN RAILROAD COMPANY, a Minnesota Corporation, (hereinafter referred to as lessee), witnesseth:

WHEREAS, lessee requires the use of the locomotive equipment set out on Exhibit A; and

WHEREAS, the respective amounts of the rentals hereinafter provided for to be paid by lessee are within the income and revenue of lessee; and,

WHEREAS, the rental required to be paid by lessee under this rental agreement represents the reasonable rental value of said locomotives, and;

WHEREAS, lessor is willing to rent said locomotives to lessee for its exclusive use and possession, subject to the terms and conditions hereof;

NOW THEREFORE, for and in consideration of the payment by lessee of the rental hereinafter provided and the performance of the conditions and covenants herein contained on the part of lessee to be kept and performed, the parties mutually agree as follows:

1. BASE TERMS. The lessor hereby rents to lessee and lessee hereby hires of and from lessor the described locomotives for a period of sixty (60) months commencing at the times set forth in Section 10 hereof for the agreed rental of Two hundred thirteen thousand nine hundred eighty one and 25/100 dollars (\$213,981.25) per locomotive unit, being the aggregate rental payable for the entire term of this agreement, and which

rental shall be paid in the following manner: One hundred seventeen and 25/100 dollars (\$117.25) per day per locomotive payable monthly following each month of service hereunder. Prior to the signing hereof, lessee has paid Ten thousand eight hundred and no/100 dollars (\$10,800.00) to lessor to be applied to the final balance to be paid hereunder.

2. DEFAULT. Upon default by the lessee in the payment of any amount due under the terms of this rental agreement, whether as rental or otherwise, or upon the violation by lessee of any of the terms or conditions hereof or if the lessee shall vacate, desert or abandon any locomotive or permit the same to remain vacated, deserted or abandoned for a period of 20 days and the failure to remedy such default within 30 days after notice of such default to lessee, then the lessor may at its option by written notice to lessee declare this rental agreement to be terminated and all rights of the lessee in and to said locomotives to be at an end, and the lessor shall become entitled to the immediate possession of the locomotives. The declaration of a default and the repossession of the locomotives by lessor shall not excuse lessee from liability to the lessor for any rental earned prior to the termination of said rental agreement, or for any other expense incurred by lessee prior to the termination of said rental agreement. Lessee shall further be liable for and shall pay all expenses incurred by lessor in taking said locomotives into its possession upon such or any default under the terms of this rental agreement.

3. USES. The locomotives are to be used by the lessee for commercial railway hauling and/or passenger purposes; and lessee shall comply with all governmental laws, regulations and requirements, and with all rules of the Association of American Railroads, the Interstate Commerce Commission and the Federal Railroad Administration, or any successors

thereto, with respect to use, maintenance and operations of the locomotives while in the possession of lessee.

4. FEES AND TAXES. Lessee shall be liable for and pay and satisfy every lawful claim and liability arising against the use or operation of said locomotives during the term of this rental agreement and, as additional rental, assumes hereunder all license fees, taxes, charges and penalties imposed by the state of operation or any other state, governmental, or municipal subdivision in which said locomotives may be situated, or may be operated, during the term of this rental agreement. Lessee may in good faith contest the lawfulness of the imposition of all such license fees, taxes, charges, and penalties and lessor shall cooperate with lessee in such contest.

5. OWNERSHIP. Lessor covenants and warrants its ownership of said locomotives and guarantees peaceful possession of the locomotives to lessee at all times during the term of this agreement.

6. INSURANCE. Lessee will provide and maintain for the said locomotives while under lease, insurance to cover both the lessor and lessee against claims of third persons as follows:

- a. Public liability and property damage coverage protecting the lessor and lessee with respect to their liability for injuries and/or death to third persons and damage, destruction or loss of use of property of third persons, as provided in the insurance policy or policies.
- b. Said liability coverage shall provide for an aggregate limit of not less than Five million dollars (\$5,000,000), to the extent commercially available, for all damages arising out of the bodily injuries to or death of persons

and for all damages to or destruction of property within one year, and with a maximum self-insured retention of Fifty thousand dollars (\$50,000) to the extent commercially available.

- c. The lessor shall not be required to provide any insurance coverage in connection with said locomotives.
- d. The lessee further agrees to provide and maintain physical damage insurance coverage for loss and damage to said locomotives due to fire, theft, windstorm, flood and other risks and hazards covered by the standard type of policy regularly issued therefor with a self-insured retention of Five thousand dollars (\$5,000) per locomotive. The lessor shall be a named insured in the above physical damage policy. Any loss or damage payments from the insurance company for damages to said locomotives, shall be payable jointly to lesser and lessee and shall be used, at the option of lessee, to repair the damaged locomotive or applied to payments made under Appendix A hereof. Lessee agrees to provide lessor a certificate of coverage.
- e. In the event that the lessee fails to procure or maintain the above insurance, the lessor may procure or maintain the insurance. The resultant cost shall be repayable to the lessor as part of the next rental payment, and the lessee's failure to pay this cost shall have the same effect as the failure to pay rent.
- f. Lessee shall provide Lessor with a certificate of such insurance from the insurer which shall provide that

insurer will notify Lessee in writing at least thirty (30) days prior to cancellation or refusal to renew any policy.

- g. Lessee shall indemnify lessor against any loss, liability, damage or expense which it may incur by reason of any claim made by third parties growing out of the operation of said locomotives, except for any loss, liability damage or expense caused or resulting from any failure of lessor to perform its obligations hereunder.

Lessor shall provide and maintain insurance to cover both the lessor and lessee against claims of third persons as follows:

- a. Claims arising under Workers' or Workmens' Compensation Acts with respect to employees of lessor performing maintenance service under Section 14 hereof.
- b. Public liability and property damage coverage protecting lessor and lessee with respect to their liability for injuries and/or death to third persons and damages, destruction or loss of use of property of third persons as a result of the ownership or use of motor vehicles in connection with Lessor performing maintenance services under Section 14 hereof.
- c. Said liability coverage shall provide for a limit of not less than \$1,000,000 for all damages arising out of each occurrence.
- d. Lessor shall provide lessee with a certificate of such insurance from the insurer which shall provide that insurer will notify lessee in writing at least thirty (30) days prior to cancellation or refusal of renew any policy.

e. Lessor shall indemnify lessee against any loss, liability or damage or expense which it may incur by reason of any claim made by third parties growing out of the operation of said motor vehicles used in connection with lessor performing maintenance services under Section 14 hereof.

7. NON-ASSIGNMENT. The lessee agrees that it will not assign, transfer, sublet or lease its rights under this lease, without the prior written consent of lessor which consent shall not be unreasonably withheld, and will not pledge, mortgage or otherwise encumber or permit to exist upon or be subjected to any lien or charge, any right or interest of the lessee hereunder. Lessee agrees to keep appropriate signs and/or plaques on the locomotives to clearly show that the locomotives are not the property of the lessee and are owned by others. The locomotives may be lettered with the name or initials or other insignia of lessee. Lessee shall have the right to permit other railroad companies to use the locomotives pursuant to power exchange agreements between lessee and such other railroad companies, provided however that lessor shall not be responsible for maintaining any locomotive while being so used by such other railroad company. Lessor shall be satisfied that the maintenance performed by the using railroad is of a standard satisfactory to lessor. Any maintenance or repairs made shall be verified with written records.

8. CONDITION AT DELIVERY. All locomotives subject to this lease shall be reconditioned prior to delivery and shall be in compliance with the Federal Railroad Administration requirements.

9. OPTIONS TO PURCHASE. Lessee shall have the right to purchase any or all of the locomotives, and to terminate this lease with respect to such locomotive or locomotives, upon the terms set forth in Appendix A hereto.

10. START-UP AND DELIVERY. The locomotives will be delivered to the lessee according to the following schedule: The effective date of the lease as to each locomotive shall be the date that such locomotive is placed in service at Whapeton, North Dakota or at such other point on the line of the RRVW as specified by that company. Six locomotives will be placed in service approximately July 15, 1987 and four locomotives will be placed in service approximately August 15, 1987. The locomotives shall be delivered to RRVW sufficiently in advance of the start-up date of the operations of the RRVW to permit the efficient start-up of operations.

All locomotives subject to this lease shall be reconditioned prior to delivery; shall meet all Federal Railroad Administration requirements and be equipped as follows:

Replace any wheels that were less than 2" tread wear.

Qualify all trucks and motors.

Qualify all engines, generators, etc.

Paint the entire locomotive, exterior and interior,
as specified by lessee.

Install bay windows.

Install snow plow.

If lessee requests that heaters be installed prior to delivery, lessor will install such heaters and the lease rate per locomotive so equipped shall be increased by Six dollars (\$6.00) per day. Lessee shall have the right to install said heaters in locomotives at its own expense subsequent to delivery.

If all or any of the locomotives are not delivered to lessee in sufficient time to permit start-up of operations, lessor shall pay lessee an amount up to Eighty dollars (\$80.00) per day for each such locomotive as

damages for the purpose of acquiring a substitute locomotive or locomotives until such time as said locomotive or locomotives are made available to lessee. If the start-up of operations on lessee's line of railroad is delayed beyond July 18, 1987 as to the south end and beyond August 22, 1987 as to the north end, the lease rate as to any locomotive not placed in service shall be reduced to Eighty dollars (\$80.00) per day until said locomotive is placed in service.

11. DAMAGE TO LOCOMOTIVES. Lessee shall pay for all damages caused by failure of lessee to maintain an adequate level of crank case oil in the air compressor or engine of any locomotive or other neglect of lessee or lessee's employees or other persons using said locomotives while the locomotives are in lessee's possession, regardless of whether the damage is discovered while the locomotives are in the possession of lessee or upon inspection when the locomotives are returned to lessor. Lessee shall assume responsibility for expenses and repairs set forth in Appendix B. The lessee further understands that lessor assumes no liability for injuries sustained by any person or employee of the lessee from the use of the locomotives except for injuries to lessor's employees resulting from the performance of lessor's obligations hereunder. Lessor does not assume any liability for failure to keep the locomotives in proper condition or repair except as provided in Section 14 hereof. Lessee may terminate this lease as to any locomotive destroyed or damaged beyond repair upon the terms set forth in Appendix A hereto.

12. RETURN OF LOCOMOTIVES. Lessee shall return said locomotives to lessor at the end of this lease in a condition as good as that in which received, normal wear and tear excepted and further excepting any condition resulting from the failure of lessor to maintain said locomotives in

accordance with Section 14 hereof or a breach of the warranty in Section 14.

Failure of the lessee to return the locomotives to the lessor at Dixmoor, Illinois, at the expiration of the rental period shall be construed as an extension of this lease from month to month under the same terms and conditions hereof, at lessor's sole option.

13. PAYMENTS. All payments or notices hereunder to be sent pursuant to this agreement shall be in writing and shall be addressed, if to the lessor to NATIONAL RAILWAY EQUIPMENT, CO., at 14400 S. Robey Street, P.O. Box 2270, Dixmoor, Illinois 60426, and if to the lessee to RED RIVER VALLEY & WESTERN RAILROAD COMPANY at 2110 First Bank Place West, Minneapolis, Minnesota 55402 or such other address as may be designated from time to time by either party in writing. All payments in arrearage shall bear eighteen percent (18%) per annum interest until date paid.

14. WARRANTY AND MAINTENANCE OBLIGATIONS. Lessor warrants all parts and components of the locomotives for the full term of the lease as to each locomotive and shall fully maintain each locomotive in satisfactory operating condition during said term. The locomotives shall be maintained so as to meet all Federal Railroad Administration requirements. The lessor shall provide at least one qualified employee with a service vehicle on site to perform the maintenance. All repairs to locomotives shall be completed within five (5) calendar days except for major engine or generator repairs which shall be completed within fourteen (14) calendar days. The time will start on both accounts after locomotives are delivered to lessee's shop, at Breckenridge, Minnesota or other agreed upon repair facility. Rental payments shall be reduced by Eighty dollars (\$80.00) per day for each locomotive held out of service for repairs for a longer period

of time unless the delay was caused by the unavailability of repair parts from General Motors or other vendor. Lessee shall provide routine service for the locomotives and consumables such as fuel, lubricants, sand, filters, brake shoes, fuses, light bulbs, carbon brushes, etc. Lessee shall provide a shop equipped with a jib crane for repairs and inspections at Breckenridge, Minnesota. Lessee shall submit the plans for the locomotive shop to lessor for review and comment prior to beginning construction of such facility. The reduction in rental payments for delay in making repairs shall not apply until such time as the shop is made available to lessor. The cost of extra labor or repair parts for repairs of physical damage caused by the negligent operation of the locomotives shall be borne by lessee. Lessee shall provide for storage of repair parts at Carrington, North Dakota.

15. INDEPENDENT CONTRACTORS. It is the intention of the parties that lessor is and will remain an independent contractor with respect to all services furnished pursuant to the lease and that all persons performing services for lessor pursuant to the lease shall be employees or agents of lessor and not employees or agents of lessee.

16. TERMINATION. Lessee may terminate this lease at any time prior to the time that possession of the lines subject of the purchase agreement between lessee and Burlington Northern Railroad Company dated July 13, 1987 is transferred to lessee pursuant to said purchase agreement. In the event of such termination, lessor shall retain the Ten thousand eight hundred dollars (\$10,800.00) paid hereunder and the lessee shall pay lessor an additional Eight thousand, seven hundred dollars (\$8,700.00) as liquidated damages in full settlement of any claims which it may have for damages because of such termination.

Notice of termination of this lease shall be effective when placed in the U.S. certified mail property addressed to NATIONAL RAILWAY EQUIPMENT, CO., 14400 South Robey Street, P.O. Box 2270, Dixmoor, Illinois, 60426.

IN WITNESS WHEREOF, the parties have signed this agreement.

NATIONAL RAILWAY EQUIPMENT CO.,
an Illinois Corporation by:

L. J. Beal
One of its officers

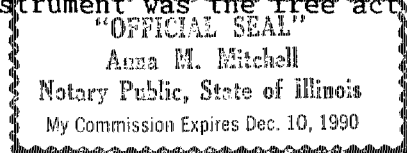
(SEAL)

RED RIVER VALLEY & WESTERN RAILROAD COMPANY,
a Minnesota Corporation by:

Kent P. Sporn
One of its officers

STATE OF ILLINOIS)
COUNTY OF Cook) ss.

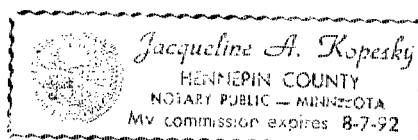
On this 21st day of September, 1987, before me personally appeared Lawrence J. Beal, to me personally known, who being by me duly sworn, says that he is the President of National Railway Equipment Co., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Anna M. Mitchell
Notary Public

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) ss.

On this 11th day of September, 1987, before me personally appeared Kent P. Sporn, to me personally known, who being by me duly sworn, says that he is the Chairman of Red River Valley & Western Railroad Company, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Jacqueline A. Kopesky
Notary Public

EXHIBIT A

Ten (10) CF 7 remanufactured locomotives, identified by serial numbers as follows:

CF 7 EMD # 300

CF 7 EMD # 301

CF 7 EMD # 302

CF 7 EMD # 303

CF 7 EMD # 304

CF 7 EMD # 305

CF 7 EMD # 306

CF 7 EMD # 307

CF 7 EMD # 308

CF 7 EMD # 309

Initial:

L. J. B.

APPENDIX A

END OF MONTH	BAL- ANCE		AGREED VALUE
0	\$ 62500	\$ 5000	\$ 67500
1	61458	5000	66458
2	60417	5000	65417
3	59375	5000	64375
4	58333	5000	63333
5	57292	5000	62292
6	56250	5000	61250
7	55208	5000	60208
8	54167	5000	59167
9	53125	5000	58125
10	52083	5000	57083
11	51042	5000	56042
12	50000	5000	55000
13	48958	5000	53958
14	47917	5000	52917
15	46875	5000	51875
16	45833	5000	50833
17	44792	5000	49792
18	43750	5000	48750
19	42708	5000	47708
20	41667	5000	46667
21	40625	5000	45625
22	39583	5000	44583
23	38542	5000	43542
24	37500	5000	42500
25	36458	5000	41458
26	35417	5000	40417
27	34375	5000	39375
28	33333	5000	38333
29	32292	5000	37292
30	31250	5000	36250
31	30208	5000	35208
32	29167	5000	34167
33	28125	5000	33125
34	27083	5000	32083
35	26042	5000	31042
36	25000	5000	30000
37	23958	5000	28958
38	22917	5000	27917
39	21875	5000	26875
40	20833	5000	25833
41	19792	5000	24792
42	18750	5000	23750
43	17708	5000	22708
44	16667	5000	21667
45	15625	5000	20625
46	14583	5000	19583
47	13542	5000	18542
48	12500	5000	17500
49	11458	5000	16458
50	10417	5000	15417
51	9375	5000	14375
52	8333	5000	13333
53	7292	5000	12292
54	6250	5000	11250
55	5208	5000	10208
56	4167	5000	9167
57	3125	5000	8125
58	2083	5000	7083
59	1042	5000	6042
60	0	5000	5000

APPENDIX A

- A-1 Any or all of the locomotives may be purchased by lessee at the end of the lease period with respect to each locomotive for the price of five thousand dollars (\$5,000.00) per locomotive.
- A-2 Lessee shall have the right, after three (3) years, to terminate the lease as to all of the locomotives upon payment of the agreed value as shown in this Appendix A. In said event, the lessor shall continue to provide maintenance (as set forth herein) for such locomotive or replacement locomotives at the rate of sixty dollars (\$60.00) per day per locomotive, nonetheless, lessee may terminate the obligation to continue to pay lessor to maintain all of said locomotives after said three (3) years upon payment of one hundred seventy-five thousand dollars (\$175,000.00) to the lessor.
- A-3 This lease may be terminated as to any locomotive destroyed or damaged beyond repair (as of the date of said destruction) upon payment to the lessor of the agreed value of such locomotive as shown in this Appendix A.

APPENDIX B

11A. DAMAGE BY LESSEE. Due to the extreme conditions these locomotives shall be working in, the lessee shall be liable and shall be solely responsible for any expenses and repairs required by reason of any of the following:

1. Any frame damage to the locomotive caused by the plowing of snow.
2. Any main generator damage caused by snow entering the main generator compartment as a result of a defect that has not been reported to lessor.
3. Any traction motor damage resulting from improper operation.
4. Any freeze damage or frozen pipes resulting from operator neglect due to improper drainage provided adequate valves are available.

Any labor and material cost resulting from the above will be payable from the lessee to the lessor as additional rent and will be due within thirty (30) days of billing.